IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.5216 OF 2005

1. Shabbir Umar Dhenkar
2. Hasanmia Umar Dhenkar ...Applicants
Vs.
The State of Maharashtra ...Respondent

Shri. N.N. Gawankar i/by Shri. Arfan Sait for the Applicants.
Shri. K.V. Saste, A.P.P. for the Respondent.

CORAM : A. S. OKA, J.
DATE : AUGUST 29, 2005.

P.C.:

1. Heard the learned Advocate for the Applicants and the learned A.P.P. for the State. The offence alleged against the Applicants is under sections 302 and 201 read with section 34 of the Indian Penal Code.

2. The learned Advocate for the Applicant submitted that case of the prosecution is that the cattle-shed of accused Nazir caught fire at 02.00 a.m. He pointed out that Post Mortem Notes of the deceased show that the stomach contained 200 cc of semi-digested food. He pointed out that according to the opinion of doctors, the death had occured in three hours since the last meal. He submitted that in view of the Post Mortem Notes the important chain of circumstantial evidence against the Applicants is broken. He pointed out that the opposition of the prosecution before the Sessions Court was also on the ground that since both the parties belong to different communities, there will be tension in the atmosphere.

He invited my attention to the fact that there was no alleged disclosure by Santosh under section 164 of the Code of Criminal Procedure, 1973 as alleged by the prosecution.

3. The learned A.P.P. pointed out the material against the Applicants and stated that there is no evidence on record and no case is made out for enlarging the Applicants on bail. They accepted that there are no statements under section 164 of the said Code of 1973.

4. I have considered the submissions. It is not in dispute that there is no direct evidence against the Applicants so far as involvement in the crime is concerned. One Sangam has stated that late in the night on 25th April, 2005 the house of the Nazir was completely destroyed in fire. According to the version of the said witness, at that time co-accused Nazir and the Applicants came there and asked about the whereabouts of the deceased and stated that the deceased should be burnt in fire. The statement records as to what transpired after 2.00 a.m. If Post Mortem notes are perused, it is obvious that there is some substance in the submission made by the Advocate for the Applicant. It will be also necessary to refer to the report dated 07th May, 2005 submitted by the Investigating Officer in the Sessions Court for

opposing the Application for Bail made by the Applicants and the co-accused. In the said report, it is stated that the accused No.2 has made a statement under section 164 of the said Code of 1973 before the Judicial Magistrate, First Class, Chiplun on 06th May, 2005. It is stated that the accused No.2 has disclosed all the facts relating to the offence showing complicity of the Applicants. It must be noted here that now the learned A.P.P. on instructions has stated that there is no such statement recorded under section 164 of the said Code of 1973. Thus, it is obvious that either there is no such statement or the statement is not brought before the Court.

5. The Applicants were arrested on 30th April, 2005. Now chargesheet is filed and investigation is complete. This is not a case where there is direct evidence against the Applicants and the evidenc is only circumstantial evidence. There is doubt created about the prosecution case because of the stand taken by the prosecution regarding the statement of the accused No.2 under section 164 of the said Code of 1973. No criminal antecedents of the Applicants have been brought on record. Therefore, the Applicants are entitled to be enlarged on bail subject to stringent conditions. The witnesses will have to be protected by imposing the stringent condition.

6. Hence, I pass the following order:

: O R D E R :

i) The Applicants shall be enlarged on bail in connection with **C.R.No.56 of 2005 of Chiplun Police Station,** subject to furnishing a personal bond of **Rs.15,000/-** each with one or two sureties in the like amount.

ii) The Bail is granted subject to condition that till the conclusion of the trial, the Applicants shall not enter the area falling within jurisdiction of Chiplun Police Station, District Ratnagiri. The order will be given effect only after the Applicants furnish to the Investigating Officer the complete address of place where the Applicants propose to stay after they are enlarged on bail.

iii) The Bail is granted subject to condition that the Applicants will report to the concerned local Police Station once in a week till the conclusion of the trial.

iv) The Bail is granted subject to condition that the Applicants shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses

and shall not in any manner tamper with the prosecution evidence.

v) The Applicants shall co-operate with the learned Trial Judge for expeditious disposal of the trial. Any attempt by the Applicants to delay the trial may be a ground for cancellation of bail.

vi) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

vii) Application is disposed of in above terms.

viii) The parties to act upon an authenticated copy of this order.

JUDGE